

ARKANSAS SUPREME COURT

No. CR 06-1133

MARCUS HANCOCK
Appellant

v.

STATE OF ARKANSAS
Appellee

Opinion Delivered

October 9, 2008

PRO SE APPEAL FROM THE CIRCUIT COURT OF ARKANSAS COUNTY, NORTHERN DISTRICT, CR 2004-294, CR 2004-340, CR 2004-346, CR 2005-105, CR 2005-106, HON. DAVID G. HENRY, JUDGE

AFFIRMED.

PER CURIAM

On February 7, 2006, appellant Marcus Hancock entered a plea of guilty in four separate criminal cases.¹ He was sentenced on March 6, 2006, to an aggregate term of 240 months' imprisonment, and the judgments were entered on March 15, 2006.² A contemporaneous order was also entered indicating that the sentences in all of these matters were to run concurrently.

Appellant filed four separate motions on March 10, 2006, which was prior to entry of the judgments, but after sentencing. Each motion listed all four criminal cases in which appellant had entered a plea of guilty. In a single order entered on April 7, 2006, the trial court denied these four motions, as well as two additional motions filed by appellant in the trial court on March 24, 2006.

¹In exchange for appellant's guilty plea, the State agreed to a nolle prosequi of the single charge of failure to appear in Case No. CR 2004-340 and the second charge, battery, in Case No. CR 2004-346. Although CR 2004-340 is listed on the notice of appeal, no criminal conviction resulted from this case and it is not at issue here. For the purposes of this appeal, we will refer to the four criminal matters in which a judgment was entered.

²The record on appeal does not contain the judgment in Case No. CR 2005-105. In that case, appellant was sentenced to 240 months' imprisonment for delivery of cocaine at the sentencing hearing held on March 6, 2006.

None of the four motions filed on March 10, 2006 were included in the record lodged in this appeal. However, the April 7, 2006, order that denied these motions noted that appellant sought (1) an appeal from the guilty plea, (2) a withdrawal of the guilty plea, (3) dismissal of trial counsel and (4) a conditional release. In addition, appellant alleged ineffective assistance of counsel in each motion. The trial court's order also stated that these four motions were considered to be petitions under Arkansas Rule of Criminal Procedure 37.1. The court denied Rule 37.1 relief on the grounds that the claims raised were conclusory rather than supported by facts as required under Rule 37.1(b). In addition, the order denied the other relief sought by appellant.

On May 2, 2006, appellant filed in the trial court a Rule 37.1 petition based on ineffective assistance of counsel and other allegations.³ The trial court dismissed the Rule 37.1 petition on June 8, 2007, and appellant brings this appeal from the denial of the May 2, 2006 petition only.

On appeal, appellant does not argue that the March 10, 2006, motions should not have been treated as Rule 37.1 petitions. Under our postconviction rules, a petition for postconviction relief attacking a judgment is considered under Rule 37.1, regardless of the label given it by the petitioner. *See State v. Wilmoth*, 369 Ark. 346, 255 S.W.3d 419 (2007). Here, in the four motions filed on March 10, 2006, appellant used the word "motion" instead of petition when describing the postconviction relief he sought. Nevertheless, appellant challenged the judgments entered on March 15, 2006, and the trial court properly treated and denied each motion as a Rule 37.1 petition.

Based on the treatment of the March 10, 2006, motions as Rule 37.1 petitions, the Rule 37.1 petition filed on May 2, 2006, constituted an impermissible subsequent or second petition. All

³Therein, appellant contended that he was denied medical records from trial counsel, that counsel refused to discuss the case with appellant, that speedy trial had been violated, that he was denied his right to appeal, that he was mentally incompetent at the time he entered the guilty plea and prosecutorial misconduct.

grounds for postconviction relief must be raised in the original petition filed in the trial court. Ark. R. Crim. P. 37.2(b). There may be no subsequent Rule 37.1 petition unless the first petition was denied without prejudice. Rule 37.2(b); *Ruiz v. State*, 280 Ark. 190, 655 S.W.2d 441 (1983) (per curiam). Here, the trial court's April 7, 2006 order did not indicate that the Rule 37.1 petitions were denied without prejudice, and no subsequent petition was authorized to be filed. Thus, appellant was not entitled to postconviction relief based upon the May 2, 2006 petition under Rule 37.1.

Moreover, we do not reverse a denial of postconviction relief unless the trial court's findings are clearly erroneous. *Greene v. State*, 356 Ark. 59, 146 S.W.3d 871 (2004). A finding is clearly erroneous when, although there was evidence to support it, the appellate court after reviewing the entire evidence is left with the definite and firm conviction that a mistake has been committed. *Flores v. State*, 350 Ark. 198, 85 S.W.3d 896 (2002). Here, the trial court specifically found in its June 8, 2007 order that the guilty pleas were voluntarily, intelligently, and knowingly made. The trial court's findings in its denial of the subsequent Rule 37.1 petition filed on May 2, 2006 were not clearly erroneous.

Affirmed.